

## **Abstract**

This article considers how licensing law conceives and practices jurisdiction. It examines the limits of attempts to define and exploit jurisdiction in the regulation of social problems connected to alcohol. Using the case study of a prohibition on the sale of spirits in the Scottish town of Motherwell during the First World War, it analyses how ‘vertical’ legal appeals through higher courts intersected with everyday ‘horizontal’ challenges to the jurisdiction of the local licensing magistrates as the ban pushed drinkers and the problems of drunkenness onto neighbouring authorities. Those higher court challenges importantly confirmed the localness of licensing, but they could not guarantee the effectiveness of the magistrates’ policy. By showing the potentially disruptive daily habits of ordinary citizens and urban infrastructure, the article promotes a social and material legal geography of licensing. In conclusion, it calls for a critical examination of the ‘local’ in local government, and the political geographies that result from appeals to space and scale in the division of governance functions.

## **Keywords**

Jurisdiction; legal geography; licensing; Motherwell; scale; Scotland

### **1. Introduction: licensing and the geography of jurisdiction**

The subject of Licensing is in many respects highly technical, and in past administration, whatever it may be in future, complicated, so much so that it is in accordance with almost universal experience that different interpretations of certain statutes and sections of statutes have prevailed according to locality, and even in the same locality, we frequent find uncertainty in administration, of what even to the technical legal mind should be certain.

Angus Campbell (1903, p. 9)

Licensing is a defiantly local mode of governance. From firearms to food-trucks, and adult stores to alcohol outlets, this governmental technology that variously licences people, places and things facilitates the regulation of behaviours otherwise held to threaten social order (Koch, 2015). Through it, central government can devolve the responsibility for managing potential problem behaviours and people down through the local jurisdictions that issue and rescind licences and on to individual licensees, who are thus tasked with preventing or militating against the ill effects of such activities (Valverde, 2003, p. 236). That devolution leaves licensing open to local interpretations, as Angus Campbell's 1903 observation on Scottish practice makes abundantly clear. The field of action, crucially, is not simply the scale of the city or county level jurisdiction of its officers. Local concerns mark discretionary encounters in urban life at the neighbourhood and even street corner scale of the licensee and marks the everyday activities of citizens (Author, 2017, p. 44). Smooth functioning licensing regimes rely on sorting the interplay between authorities, operating at different vertical jurisdictional scales, and horizontal tensions within and between

neighbouring jurisdictions. This article uses the case study of a prohibition on the sale of spirits in the Scottish town of Motherwell during the First World War to interrogate developments and definitions of the 'local' in municipal regulation and unpack the role of scale in the apparently smooth functioning of licensing jurisdiction. It establishes the relationship between such sorting 'effects' of jurisdiction and the broader place-making power of law on the regulation and experience of urban social life (Braverman et al, 2014, p. 18).

The scalar sorting of justice functions has attracted attention from critical legal scholars and legal geographers.<sup>1</sup> Mariana Valverde, for example, examines how such functions appear, somehow naturally, to be the province of courts with particular national or local jurisdictions (Valverde, 2009, p. 150; also see Valverde, 2014, p. 387). The action of such taken-for-granted assumptions betrays a bounded geographical imagination, as if jurisdictions are 'discrete areal units' (Williams, 2016, p. 104). Importantly, the notion and practice of jurisdiction 'distinguishes more than territories and authorities', 'more than the where and the who of governance'. Jurisdiction works as a device for sorting and distributing 'the "what" of governance' (Valverde, 2009, p. 144). The significance of such accounts is to show that scale is not a given but rather a 'device manifesting in legal practice as jurisdiction' (Williams, 2016, p. 98). It is 'as much a tool of government as a way of doing law' (Carr, 2016, p. 207). There is, therefore, an active 'politics of *scaling*' (Green, 2016, p. 89, my emphasis), a 'scalecraft' made manifest in repeated reorganizations of governmental functions (Pemberton, 2016, p. 1306).

The operation of government through law relies on a 'performance' of scale (Blomley, 2013, p. 7), as functions are settled on and actioned through local administrative bodies such as licensing authorities. Turning to appeal court cases, to challenges to the settlement of government functions, can usefully reveal these performances and show that they rely on a scalar as well as spatial imagination of jurisdiction (Delaney, 2010, p. 17). Laam Hae (2011, p. 133), for example, documents the dismissal of legal challenges to New York's 'cabaret law', which requires the licensing of social dancing. In these challenges, the appeal courts rejected claims that dancing is a constitutionally protected 'freedom of expression' and upheld the municipality's ability to regulate through licensing. Phil Hubbard (2012) has drilled down to the scale of the individual licensee, citing the example of a London publican who used the public order function embodied in licensing to police same-sex-intimacy on their licensed premises, a local defeat over national equalities legislation. Scaling out from similar case study work of individual premises, Brown and Knopp (2016, p. 355) have shown how the daily operations of the Washington State Liquor Control Board reflected and reproduced moralised anxieties around sexuality, class and race. Such normative preoccupations, enacted through licensing, are implicated in the local 'construction and governance of marginalized populations', they show. The performance of scale translates into significant daily differential experiences – within, never mind between, jurisdictions.

These are all excellent examples of the way in which law 'works through *localisation*'. Luke Bennett expresses that localisation as law's '*em-placement* and embodiment into things and places' (Bennett, 2016, p. 184, original emphasis). That

emphasis on 'things' is vital to my argument about the ability of urban life to disrupt licensing law's performance of scale. It comes from the traumatic days of war, when there were repeated calls for temperance campaigners for the tighter regulation of drinking and drunkenness. The state responded by creating the Central Control Board (Liquor Traffic) (or CCB), to oversee the drink traffic in areas where the effects of alcohol were held to be particularly injurious to the war effort (BPP, 1914-6 [Cd. 8117] XXV.1, p. 4). At its most interventionist, it nationalised the drink trade in specific sites, such as the major cordite works at Gretna (see Gutzke, 1998; Duncan, 2013). Its influence was much more widely felt, however, as it had powers to introduce stricter rules such as shorter hours of sale in 'scheduled' areas (BPP, 1916 [Cd. 8243] XII.493, p. 18; see Cooke 2015, p. 161). By the summer of July 1915, there were ten such areas in England and two in Scotland (BPP, 1916 [Cd. 8243] XII.493, p. 6) and over the course of the war the Board's 'restrictive orders' would come most of Britain (Carter, 1919, p. 134). The West of Scotland region came under the Board's oversight on 23 August 1915 (BPP, 1914-6 [Cd. 8117] XXV.1, p. 5). The following spring, filled with the temperance spirit, Motherwell magistrates took their bold decision to ban the sale of spirits in the town's pubs.

The innovation was clearly at odds with the broader scale management of drink that the CCB's powers enabled, yet it gave the Board a chance to investigate the effects of the kind of prohibition that temperance groups had demanded. It despatched its Scottish inspector Kenneth Greenhill to Motherwell. I use Greenhill's report, held in the CCB materials at the National Records of Scotland, newspapers, and municipal and legal records to reconstruct the fallout.<sup>2</sup> Section two establishes the development and localisation of

licensing to Motherwell, and the municipal context through which this ban became possible. It demonstrates the 'scalecraft' at the heart of the organisation of local government. The paper then proceeds along two axes. Section three considers the immediate legal challenge of the town's publicans, upwards, through the higher courts. While they were convinced of and indeed subsequently confirmed in their jurisdiction, Motherwell's magistrates failed to anticipate the everyday practical challenges to their ban. Denied of their spirits, Motherwell's drinkers reportedly took to the trams to slake their thirsts in neighbouring licensing jurisdictions. Section four shows how the legal vertical *imagination* of jurisdiction was practically undone by these material and mobile 'horizontal tensions' (Blomley, 2013). It draws on assemblage ideas from studies of alcohol and urban geography to theorise these mobile drinkers' drunkenness, which confounded the ban by effectively resisting its 'embodiment' (Bennett, 2016, p. 184). Taken together, these challenges exemplify a series of tensions over scale and locality, showing how jurisdiction is a powerful scalar and spatial tool of place making, and not simply law making.

## **2 Motherwell: a wartime place in formation**

This place-making power of law is particularly important in the context of my case study, because population growth in Lanarkshire meant that the map and locus of local governance needed to be redrawn. Administrative units such as the burgh might feel unfamiliar, yet the rescaling represented by their creation was and remains a central feature of British statecraft. According to Tom Crewe (2016, p. 6), for example, '[t]he creation of the

British state was a municipal project'. Indeed the creation of new municipal authorities was a vital response to Victorian and Edwardian urbanisation, and legal mechanisms were at the heart of that project: a way not only to legislate for their creation but also to react to associated social anxieties in them. It provided urbanising towns such as Motherwell with powers to take charge of governance tools from existing county-level administrations. While its growth is hardly iconic, the development of policing and licensing in Motherwell typifies the important broader role that jurisdiction played in the development and delineation of towns, cities and civic identities (see Dykes 1907, pp. 18-19 for a contemporary guide to Scottish needs).

Motherwell expanded with the coming of the railways, conveniently located at the junction of lines to Glasgow and Edinburgh (see Figure 1). The population of the parish of Dalziel in which it was situated had numbered 5,738 in the 1861 census, with just 2,925 in the town (BPP, 1862 [3013] L.945, p. 75). By 1916 Motherwell had expanded to around 40,000 people (North Lanarkshire Council Archives (NLCA), UJ/1/01/23, Burgh of Motherwell, Town Council Minutes, 4 January 1916, p. 3). The early stages of that growth had already changed Motherwell's relationship with older county levels of administration. For example, the town qualified under mid-century legislation to become a police burgh, a status it achieved in 1865. This allowed for the election of local commissioners – their policing being the promotion of order, health and welfare through tasks like street cleansing and lighting rather than simply disciplining disorder through uniformed police forces (Barrie and Broomhall, 2014a, p. 79, p. 84, 87, p. 105; Maver, 2007, p. 35; see Valverde, 2003). Reforms to determine new local scale police court jurisdictions disrupted older geographical

administrative units such as the parish and the burgh (examples include 1850 Police of Towns (Scotland) Act (13 & 14 Vict. c. 33); and 1862 General Police and Improvement (Scotland) Act (25 & 26 Vict. c. 101)). According to Barrie and Broomhall (2014b, p. 7), these changes importantly ‘imposed a new way of conceptualising and partitioning the city’. Through the creation of units such as police burghs, law was thus instrumental in reshaping the political geographies of urban governance but also the social geographies that stemmed from their daily enactment.

While it would be some time before legislation addressed licensing, various acts worked to reshape other governmental functions. The 1892 Burgh Police (Scotland) Act (55 & 56 Vict c. 55), for example, consolidated the local government of policing and public health for over half of Scotland’s people by mandating the establishment of burghs in places with 2,000 people. It also raised the minimum population required of burghs before they could establish their own distinct police forces from 7,000 to 20,000 (Irons 1893, pp. xvi; ix-x). On the eve of the War, and the controversy of this article, Motherwell had been in the process of establishing just such a force, independent of the county of Lanarkshire. By 1914, it had appointed its own chief constable and officers but legislation got in the way, with the government concerned that establishing new forces could harm military recruitment (NLCA, UJ/1/01/22, Burgh of Motherwell, Town Council Minutes, 26 April 1915, p. 89).<sup>3</sup> These changes and challenges, though specific, go some way to highlighting the ways in which legislative responses to changing settlement size intersected with existing governance structures.



**Figure 1.** The Burgh of Motherwell (drawn using 1911 Ordnance Survey 1:20,000, source Historic Digimap, Crown Copyright)

Two changes at the beginning of the twentieth century were pivotal to the Motherwell ban. Firstly, the 1900 Town Councils (Scotland) Act (63 & 64 Vict. c. 49) consolidated and re-titled local governance, replacing older bodies of commissioners in burghs with formal town councils, whose senior representative was called a Provost. Secondly, and most importantly, the 1903 Licensing (Scotland) Act (3 Edw. 7, c. 25) reorganised the geography of licensing. Historic royal burghs, some with populations in the low hundreds, historically had retained their own local licensing authorities. By contrast, county justices managed licensing for the police burghs, irrespective of their population size.<sup>4</sup> The 1903 Act corrected this anomaly. It required all the councils of royal and police burghs with populations over 7,000 to appoint from their number a group of magistrates – known locally as bailies – as their licensing authority (Atkinson, 1903, p. 64). On the face of it, licensing had thus been localised, significantly expanding the footprint of representative accountability in Scottish licensing and rooting it more firmly in the growing towns that it served.

A separate element of the 1903 Act would shape the Motherwell case, however, by challenging this localism. It reflected a tension between burgh and county, between elected local responsibility and regional oversight. Each burgh with a population over 20,000 was to have an appeal court – composed of the original burgh magistrates and an equal number of justices appointed by and from the broader county bench. For Motherwell, these came from

the historic middle ward of Lanarkshire. A noteworthy attempt to remove licensing appeal courts altogether had been defeated in the passage of the Bill. Some objected to burgh magistrates having any kind of say in appeals against their initial judgments. Others complained at the inclusion of county justices, in part because they were appointed rather than elected but most importantly because this queried the *local* scale of licensing decision-making. Alexander Asher, MP for Elgin in northern Scotland, complained that appeals might involve people from ‘the other end of the county, who knew nothing whatever about the local circumstances’ (*Hansard*, HC Deb, 13 July 1903, vol. 125 col. 476). This nesting of the *appeal court* at a larger administrative scale exposed licensing to what the future Prime Minister Sir Henry Campbell-Bannerman termed ‘the vice of distant residence and distant knowledge’ (*Hansard*, HC Deb, 6 April 1903, vol. 120 col. 1183). The explicit defence of local scale knowledge and discretion in licensing remains vitally important (see Hubbard, 2012). It provided the defence for the ban that Motherwell’s magistrates introduced and, through everyday opposition to the measure, a means to glimpse the performance of municipal authority through jurisdiction.

### **3. ‘Away with the whisky’**

At the Motherwell licensing court in April 1916, the magistrates Provost Andrew Wilson, his brother William and his fellow Bailies Coughtrie, Port and Scott *renewed* forty-eight licenses for the sale of victuals, wine, porter, ale, beer, cider and perry (NLCA, UJ/1/09/02, Register of Applications for Sale of Excisable Liquors, 1909-1920). From 28 May,

the start-date of their new certificates, licensees were forbidden from selling spirits (*Motherwell Times*, 1916, April 14). Provost Wilson reportedly told the publicans that the CCB's conditions were not being implemented in Motherwell: but what might have led the bench to reach for a ban on spirits? In his review, Kenneth Greenhill described Coughtrie and the Wilson brothers as 'extreme temperance reformers', the war being 'an excuse to further the ideals to which they were pledged' (National Records of Scotland (NRS), HH31/7/19, item II, Report to the CCB (Liquor Traffic) on the Motherwell Area, by J. Kenneth Greenhill, 14th October 1916, p. 1). Temperance sympathisers in Scotland had certainly insinuated themselves into municipal politics (see Fraser and Maver, 1996; Author, 2016). And campaigners looked forward to the practical introduction of the 1913 Temperance (Scotland) Act, which would give ratepayers a plebiscite on the sale of drink in their neighbourhoods (Nicholls, 2012). While war delayed its introduction, the legislation betrayed both the localism invested in licensing and the local energy in Scotland for innovation. Emblematically, the Motherwell licensing meeting began with the magistrates accepting a petition for action from the British Women's Temperance Association (BWTA). A matter of weeks earlier Andrew Wilson's wife had submitted a resolution to her local BWTA meeting calling for prohibition during the War (*Motherwell Times*, 1916, March 31). Now, as Provost, Wilson could act on the sentiments and bring *very local* influence to bear on licensing (*Motherwell Times*, 1916, April 14).

Reports suggested that in advance of the ban's introduction people had been buying and storing extra bottles of whisky. In the short term, this proved unnecessary as publicans mounted a legal battle that, they felt, allowed them to continue to sell whisky (*Motherwell*

*Times*, 1916, June 2). Their first step was to challenge the magistrates' decision to their local licensing appeal court. At the appeal, which included justices of the peace from the middle ward of Lanarkshire, the metals magnate Archibald Colville took the chair. It is easy to see why he was sympathetic to temperance: with 5-6,000 employees his was the largest firm in the Scottish steel industry at the outbreak of war and would, with the assistance of the Ministry of Munitions, acquire other local works (NRS, HH31/7/19, item II, p. 3; Payne, 1979, p. 109).<sup>5</sup> Appearing for the licensees, William Watson argued that the magistrates should have allowed the licensees their say in court. Section 11 of the Act was clear: it was not 'competent to refuse the renewal of any certificate without hearing the party in support of the application for renewal in open court' (Campbell, 1903, p. 45). This technical objection was part of a broader challenge to the competency of the bench; their job, Watson said, was to regulate the industry, not to extinguish it. Drinkers, he predicted, would simply go elsewhere 'to buy in bulk or in bottle', the only beneficiaries being the publicans in other towns (*Lanarkshire*, 1916, May 6; see Table 1).

**Table 1.** Licenses. (*Source: Motherwell Times* 5th May 1916a)

The first case was that of Daniel Baillie, for 164-6 Brandon Street. With the bench divided – five votes each for and against granting a spirits licence<sup>6</sup> – Colville, reportedly conscious of the likelihood of an appeal, gave a 'casting vote in favour of refusal', which was also passed on the other licensees (*Motherwell Times*, 1916, May 5a). A delighted *Motherwell Times* (1916, May 5b) leader writer expressed hope that the decision of such a strategically

important employer would 'make itself felt far beyond the boundaries of our small but important burgh'. It would – though not for the benefits to industrial output that the paper hoped would stand as Motherwell's example to the country.

The disaffected publicans brought a civil action in the Court of Session, arguing that the magistrates had acted 'irregularly, illegally, and contrary to their statutory duties' by not allowing them to be heard in court (*Motherwell Times*, 1916, May 26). The Hamilton weekly newspaper *Lanarkshire* (1916, May 27) noted that one of the pursuers, Harry Thomson, had his premises just one-quarter mile from an unaffected licensee across in Wishaw. And it noted that tram fares to towns like Wishaw and Hamilton could be had for 1 to 3d. Some enterprising publicans applied to the Inland Revenue for certificates that would enable them to sell spirits while they waited for the courts. They were exploiting a section in the 1903 Licensing Act designed to protect licensees who had appealed the loss of their licence, but whose cases could not be heard before those certificates expired (*Motherwell Times*, 1916, June 2; Campbell, 1903, p. 70). The licensees evidently interpreted their case in the Court of Session as just such an appeal (*The Scotsman*, 1916, May 27). *Lanarkshire* (1916, May 27) expressed its surprise: 'what is the use of a licensing court at all', it asked, if people were able to appeal cancelled licences and so carry on selling alcohol under Excise certificates. The local authorities also disputed the licensees' reading of the law, prosecuting five for selling drink without a licence. Their cases were heard at the local police court before Bailie Coughtrie, one of those 'extreme temperance reformers', now exercising his other magisterial responsibilities. First up was James Gorman, proprietor of the Cross Keys at the corner of Watson Street and Hamilton Street, who claimed to have received assurances

from the Revenue by telegram, so had started selling spirits *before* he was in physical receipt of their certificate. The case rested on the bigger question of whether the publicans' civil action constituted an 'appeal' under the 1903 Act. Coughtrie agreed with the prosecuting Fiscal: it did not. The licensees had sold spirits without relevant certificates, and Coughtrie fined them £10 or 7 days' imprisonment. Their appeal to the High Court of Justiciary, however, delayed hearings against 32 other licensees facing the same charge (*The Scotsman*, 1916, June 17; *Lanarkshire*, 1916, June 17; *Motherwell Times*, 1916, June 23c). This small town had now generated cases in Scotland's highest civil and criminal courts (Figure 2).

**Figure 2.** The scales of licensing

The *Motherwell Times* attacked the publicans. It took on their complaints that they were being treated differently to the trade in other towns. Rooting an argument of magisterial jurisdiction in a very local reading of the state, its leader writer argued: 'For the trade in Motherwell, the local Licensing Court is the authority, and to that authority its members must bow, and if they band together in defiance of it, they must take the consequences in police court proceedings as well as in the public condemnation of their action' (1916, June 30). The publicans adamantly refused to take this lying down, collectively exploring all legal avenues to overturn the ban. The High Court dismissed the appeals against the prosecutions for selling drink without a licence but the outstanding civil case meant the deferment of prosecutions against the remaining licensees (*Motherwell Times*,

June 23a; *Lanarkshire*, 1916, June 24). On 18 July Lord Ormidale issued his decision in that civil action, interestingly just days after the CCB's Lord D'Abernon had visited Hamilton and Motherwell and met with licensees (*Lanarkshire*, 1916, July 15). The case highlighted the relationship between jurisdiction as a space or field of action – Motherwell – and the local press's view of it as the 'authority' to act.

The publicans complained that it was unreasonable for teetotal magistrates to impose such a blanket restriction across a licensing jurisdiction. Appearing for the Motherwell bench DM Wilson complained that the statute law simply read that 'it shall be lawful' for them to licence, not that it was 'absolutely obligatory'. Turning to the question of jurisdiction, he argued that Ormidale's court did not have the authority to interfere with the absolute discretion of Motherwell's magistrates. The magistrates had restricted the sale of spirits but they had *renewed* privileges to sell beer and wine, he said. They had the authority to act, in other words. As they were not issuing *new* licences, in this reading at least, it had not been necessary to hear from the licensees at the sessions (*The Scotsman*, 1916, July 5). The Lord Advocate Robert Munro, the Crown's principal legal adviser, made a similar defence on behalf of the Licensing Appeal Court, even defending their action by appealing to 'the days in which we lived' (*The Scotsman*, 1916, July 6).<sup>7</sup> The circumstances of war *apparently* demanded the magistrates' intervention, which was enabled by their legally sanctioned discretionary powers. Munro thus sought to reduce the case to a question of the authority of the magistrates. In his ruling, Lord Ormidale confirmed that the magistrates had 'a power to regulate and control of the fullest and most unrestricted character'. Even if they had been driven by the best of motives, however, 'they had no power wholly to prohibit the

sale of spirits within their jurisdiction'. He believed the law burdened them to licence qualified applicants: anything else, he felt, would have been 'very clearly enacted' in law (NRS, CS46/1917/8/4). Ormidale's final judgment rested on a technical reading of the magistrates' *process* rather than privilege or power: he disagreed that they had renewed existing certificates, which meant they had 'acted without statutory warrant and had exceeded their jurisdiction'. He reduced the magistrates' decision and ordered the clerk to add the sale of spirits to the licensees' certificates (*The Scotsman*, 1916, July 19).

The result did not find favour amongst the ban's supporters. 'What the Magistrates did may not have been good law', wrote columnist Captain Kidd, attacking the publicans, 'but by God it was the Right!' (*Motherwell Times*, 1916, July 21). Perhaps unsurprisingly it was now the turn of the magistrates to appeal. This had to wait until after the summer vacation, further prolonging Motherwell's prohibition. In this space, Greenhill reported to the CCB that the embattled publicans were confident of victory (NRS, HH31/7/19, item II). The Court of Session (the Lord President, Lord Strathclyde; and Lords Johnston, Mackenzie and Skerrington) did indeed find in their favour. The Lord President (Alexander Ure), determined that the magistrates had acted 'contrary to their statutory duties' by refusing to hear the licensees in court. 'Refusal of a part of the existing licence was refusal of the existing licence', Lord Strathclyde concluded: 'What happened at the Licensing Court was plainly all wrong'. Their Lordships, however, took issue with Lord Ormidale's remedy. Writing the sale of spirits into the licences was 'incompetent' because it effectively set up the Court of Session as a licensing court. It meant that Ormidale was effectively granting licences, for which he had no jurisdiction. Motherwell's magistrates may have got their



process wrong, but licensing was certainly no business for this higher court. 'Exclusive authority had been given to the Licensing Court. Their discretion was unfettered', Lord Strathclyde reiterated, though he warned that it had to be 'exercised strictly in terms of the statutory provisions' (Alison et al, 1917, 64). That included giving the licensees a fair hearing, which meant re-running the licensing session (*The Scotsman*, 1916, November 4).

At this meeting, on 17 November, the bench could have allowed the publicans their say and then simply issued the same restrictions on spirits. Lord Johnston had told the Court of Session that he had an 'open mind' as to the legality of a ban, were the proceedings correctly instituted. Their Lordships had been able to reserve judgment on the legality of a ban, sticking to technical concerns about its introduction (Purves and Keith, 1921, p. 30). They simply passed the problem back down, although Lord Skerrington expressed regret that this put the future of the licensees back in the hands of magistrates who had 'already illegally prejudged the question' (Alison et al, 1917, 72). The composition of the bench had changed in the intervening months, however. Andrew Wilson had retired as Provost, having told his colleagues that he 'had had a very strenuous time of office'. A licensed grocer, ex-Bailie Macneill, had replaced him, but his profession barred him from the licensing bench. That declared teetotallers faced no such exclusions, and could exercise their local knowledge and influence, grated with the licensed trade. The new member of the bench, ex-Bailie Froom, appointed despite Wilson's recorded opposition, was keen to explore the legality of imposing an overall ban (*Lanarkshire*, 1916, November 11). Their Clerk James Burns told the magistrates that they could grant the licenses 'in toto, grant them in part, refuse them in total, or refuse them in part. They could do anything they liked, as in April'

(*Motherwell Times*, 1916, November 24). The appeals had confirmed their jurisdiction and their discretion. In the next section I turn to the more mundane *horizontal* legal and social geographies that ultimately shaped the magistrates' decision to step back from the ban.

#### **4. Disassembling the ban**

This section draws on research in social and cultural geography to explain how the every-day and every-night behaviours of people under the influence of drink disrupted the place-making power of legal jurisdiction. To return to Luke Bennett (2016, p. 184, licensing needed, in effect, to be embodied if it was to be effectively emplaced. To work effectively, the ban needed acquiescent publicans and respectful citizens and yet the crepuscular antics of drinkers effectively resisted both. Here, there is an opportunity to bring assemblage accounts of the embodied effects of consuming intoxicants into dialogue with the legal geography by considering their mobility and subsequent interaction with the regulated environments of pubs, streets and tramcars (Latham and McCormack, 2004; Duff, 2014; Shaw, 2014; Duff and Moore, 2015; Jayne and Valentine, 2016; Jayne, Valentine and Holloway 2011). By displacing spirits *drinking* beyond the jurisdiction of the Motherwell police, the magistrates paradoxically made *drunkenness* more visible. These horizontal geographies identify the disruptive influence of social life on law's attempts to assemble municipal life.

Kenneth Greenhill's report set out to review the effect of 'imposing prohibition, either partial or total, on a small area'. He began by examining the 'geographical position of Motherwell' relative to neighbouring towns (see Figure 1). *The Scotsman* (1916, June 20) reported that on the Saturday evening following the introduction of the ban 'the [tram] traffic between Motherwell and Hamilton was abnormally heavy'. *Lanarkshire* (1916, June 28) likewise noted 'an extraordinary traffic' between Motherwell and Hamilton and Cragneuk, the majority being labourers out to quench their thirsts. 'During the first whiskyless week', it concluded, 'the drawings of the [Motherwell] publicans are stated to have decreased by one half'. Greenhill's interviewees in Hamilton confirmed that they were profiting from the prohibition. Returns were highest for licensees around the Cross, where the thirsty drinkers usually alighted. The managers at these pubs – Bruce Arms Bar, Mrs Cameron's Bar, Mr Hamilton's Bar and Maclachan Arms Bar – estimated takings were up by 25 per cent, though Greenhill thought the figure might be even higher. Wishaw's Town Clerk also saw prohibition as a 'gold mine' for his town's publicans, with takings up 40%. While Greenhill thought that figure was far-fetched, they were demonstrably profiting at the expense of Motherwell's licensees. One enterprising bar-owner in Carfin, outside the burgh boundary, was reportedly delivering £30 worth of spirits a week into Motherwell. To give some context on prices, the *Motherwell Times* columnist Captain Kidd reckoned that publicans in Motherwell were still taking £18 a week on beer, and remaining profitable. So comparatively high were the Carfin publican's takings that he could now afford to keep a motor van for the job (NRS, HH31/7/19, item II, p. 10). These legal boundaries were certainly porous to drinkers going out of, and drink being spirited into, Motherwell.

The 'vertical' legal challenges, then, are really only part of the ban's undoing. It was daily under attack by 'drowthy men' who were moving *across jurisdictions* (*Motherwell Times*, 1916, June 23b). This resulted in micro-local governmental tensions around things like the costs of policing – tensions that get to the heart of the kind of prosaic 'effects' by which local government's statecraft becomes visible (Painter, 2006). While Hamilton policed itself, Motherwell remained reliant on the county. Likewise Wishaw, which was engaged in a battle with the county over the scale of its financial contributions (NLCA, UJ/1/02/19, Burgh of Wishaw, Town Council Minutes, p. 69). This was the backdrop to intriguing policing strategies, as the ban intersected with regulatory bodies in other jurisdictions. The tramways staff accused Hamilton's police of putting drunks on trams instead of apprehending them, and took aim at the 'laxity' of the police in Motherwell. In his study of modern Newcastle, Robert Shaw (2014, p. 93) argues that the police harness the boundary breaking potential of taxis to move drinkers out of the city and into the slumbering suburbs. Hamilton's police were similarly attempting to disperse trouble, the constable at the Cross admitting that it was not uncommon for them to carry 'barrow loads of drunks and shovel them on to the Motherwell cars'. These tramcars had a capacity of 68 but were frequently carrying 100. On Friday and Saturday nights, 70% of passengers were 'the worse for drink', witnesses from the tramways company told Greenhill. The cars were 'rendered in a disgusting condition by the inebriated passengers vomiting in them', and staff left to fix broken windows. 'No stronger or more emphatic evidence has ever been laid before me', Greenhill concluded (NRS, HH31/7/19, item II). If we were to overlay on tracing paper the jurisdictions of the different policing and licensing bodies we would see that they did not align neatly. The drifting drinkers exposed that non-alignment.

Newspaper court reports reveal the animosity felt in neighbouring jurisdictions. Dealing with Motherwell's drinkers was creating extra work for, and resentment from, the authorities in Hamilton and Wishaw. In July, for example, Wishaw's police court dealt with the case of two Motherwell labourers who had, after 'paying a round of visits to the refreshment bars', taken to fighting at the West Cross. Passing sentence of ten days' imprisonment, Bailie Frew concluded that both men had evidently come to Wishaw 'for the express purpose of getting whisky' (*Lanarkshire*, 1916, July 12). Though no doubt not the first time Wishaw's police court had dealt with men from Motherwell, cases after the ban convey a clear resentment and condemnation of social problems being relocated. 'If Motherwell could not get Hamilton and Wishaw to fall into line with them as regards the liquor restrictions,' Frew told one notably busy police court sessions later in the year, 'then Motherwell must fall into line with Hamilton and Wishaw' (*Wishaw Press and Advertiser*, 1916, November 17). It would be the drinkers rather than the higher courts that saw to this, their mobility and agency challenging the spatial imagination of jurisdiction.

The mundane nature of these offences was set against the sacrifices of war. *Lanarkshire* reported the case of two men of military age – one claiming to have been wounded at the front – who got so drunk in Hamilton they were refused admission to a Motherwell-bound tram. Prosecuting, police chief Captain Miller complained that this 'coming of men from Motherwell was getting intolerable. It was not a reasonable drink such persons took when they arrived in the town – they filled themselves drunk. It was horrid that they in Hamilton had to suffer this sort of thing, for these men simply came over and

made beasts of themselves' (*Lanarkshire*, 1916, July 26). Clearing their busiest lot of Motherwell prisoners, ten, taken up on Saturday November 18, the Hamilton Fiscal objected that one was so drunk that 'he could have been tied in a knot'. Another, found in a state of coma at 11.30pm, had to be taken to the police office in a wheelbarrow, it being 'three o'clock in the morning before he showed any signs of consciousness'. They were each fined £2 or 20 days' imprisonment (*Lanarkshire*, November 22). Such cases contrasted with the efforts of young soldiers fighting for their country on the continent. Sentencing a Motherwell drinker in Wishaw, Bailie Scott condemned as 'scandalous' the pestering by 'people who got drunk and incapable' while the 'flower of the country were dying in France' (*Lanarkshire*, October 4). The magistrates of neighbouring towns were thus upping the ante by holding a moral mirror to Motherwell, seeking reflection from their neighbouring magisterial brethren.

Reformers sought a different lesson. Speaking in the House of Commons on 26 October the MP for North East Lanarkshire James Duncan Millar called for a prohibition on spirits across the CCB's scheduled Scottish areas. Although careful not to touch any live legal questions, Millar asked the Board to consider the 'excellent results' seen *within* Motherwell. Yes, men had travelled 'outside to get their spirits', he told Parliament, but with an almost 'complete cessation of drinking among women' Motherwell itself was better for the ban (*Hansard*, HC Deb, 26 October 1916, vol. 86, col. 1427). If expanded, presumably the travelling would stop; it was the ban's scale that limited its success. Greenhill reckoned that reformers saw the decline of drunkenness as proof that they had made "a heaven out of a hell" (NRS, HH31/7/19, item II, pp. 3-4). With the exception of the main tram stop, the town

seemed more orderly. The Cross was a symbolic meeting point of policing and licensing policy with the interests of temperance reformers and ratepayers, publicans, canny drinkers and less careful drunkards. Whilst the police could concentrate their efforts there, a combination of large crowds and understaffing meant they could not apprehend everyone who was drunk and incapable – confirming police statistics as an ever-unreliable guide to rates of offending.

The streets being ‘exceedingly dark’ made things even harder for the police. In February 1916, the Council’s lighting committee had responded to a government order by reducing the strength and number of streetlamps. Main streetlamps were set at 100 candlepower strength, with shades to limit light pollution and so reduce the threat of bombing. This was limited to just ten sites in the burgh, including the Cross. In streets that had previously been lit with 45 c.p. lamps the committee agreed to light only every third lamp, and at a reduced 16 c.p. (NLCA , UJ/1/01/23, Burgh of Motherwell, Town Council Minutes, 34, Report by Lighting Committee, 21 February 1916). Acting as councillors, Coughtrie and Froom criticised the Lanarkshire chief constable’s advice to reduce the lighting, taking their case to Millar and the Secretary for Scotland just days before they returned to the licensing court (*Lanarkshire*, 1916, November 11). These orders did not set out to make policing more difficult, of course. If we consider the emplacement of law in and through things we can animate the role of infrastructure in challenging the authorities’ management of Motherwell’s people.

The multiple administrative roles of a small number of individuals in authority is noteworthy, because it shaped the local knowledge that was admissible in the dual administrative and judicial world of licensing. To see this, we can turn to the Motherwell magistrates' other role as the patrons of police court justice. Here they confronted people who had defied the ban. Bailie Wilson, who had been supported the prohibition, fined a man found drunk and incapable at the railway station one July Tuesday evening £2 or 15 days. It was the man's fourth appearance that year, and he admitted to procuring the drink outside Motherwell. Wilson was also unimpressed that another man, fined £2 on a similar charge, was back in court the day after his first offence (*Lanarkshire*, July 29). Another drunkard, taken up in Brandon Street for using obscene language, responded to criticism of his record: 'I was working pretty hard yesterday, your Honour', he told Bailie Scott, 'and at night I went up to Craigneuk to get a glass of whisky. It was the drink that loosened my tongue'. Scott ordered £1 be loosened from the man's pockets, with a week to pay or 10 days in prison (*Lanarkshire*, August 26). This police court work provided the magistrates with knowledge that they could take into the licensing court; they could scarcely ignore how, through their movement and their drunkenness, Motherwell's working-class drinkers were resisting the ban.

Importantly, the ban did not result in any obvious improvement in munitions output. Archibald Colville ultimately concluded that it was 'hopeless' to impose prohibition on such a small area. This was the lesson from Greenhill's report, as the Secretary for Scotland Jack Tennant told Lord D'Abernon: Motherwell showed the ineffectiveness of half measures. Greenhill told the Board that drunkenness was on the rise across the county, prompting



concerns about the broader effects of CCB restrictions. For its part, the CCB was aware that its operations were taking time to bed in, complaining of police court magistrates issuing low fines for drunkenness and local sheriffs delivering adverse decisions (*Motherwell Times*, 1916, May 19). One Glasgow paper complained that the CCB's measures had 'cut deep into the vitals of Scottish jurisprudence'. This had led some sheriffs to strike out 'against the invasion of constitutional and personal liberty', irrespective of the exceptional state of the war (*The Bailie*, 1916, April 12). This was not the view of Motherwell's Provost Wilson, of course, who expected licensees to be 'patriotic enough to acquiesce' to forego their liberties for the sake of the times (*Lanarkshire*, 1916, October 18; *Motherwell Times*, 1916, October 20). Looking across its scheduled area, then, the CCB could see a varied geography of wartime liberty, as local authorities and courts variously, and inconsistently, interacted with its measures and each other.

The licensees rejected the *Motherwell Times'* (1916, June 30) assertion that they should effectively lie down because the magistrates were 'the authority' in the burgh. Lord Ormidale's ruling actually confirmed this, but effective licensing relied on understanding areas and communities, people and things, beyond the management of individual pubs. When the magistrates re-convened in November, Bailie Coughtrie and William Wilson again declared support for the prohibition. Bailies Scott and Port voted for the sale of spirits and with the vote of new man Frood the bench granted full licences – including one for the new Provost's grocer's shop (*Lanarkshire*, 1916, November 18). Frood issued a warning. 'They were living in critical times', he told the licensees, 'and every drunk man who appeared at the court on a Monday morning was a certain amount of reflection upon the way their trade

was conducted'. Motherwell had back its *sale* of spirits, though of course it had never really run dry. Not all of its citizens had the same freedom to drink them, however. The magistrates could not – or more accurately would not – ban spirits outright, but Froom told the publicans that 'no woman should be supplied at a bar with whisky, or allowed to sit in a shop drinking unless she was accompanied by her husband' (NLCA, UJ/1/09/02, Register of Applications for Sale of Excisable Liquors, 1909-1920, 17 November 1916; *Lanarkshire*, 1916, November 18; *The Scotsman*, 1916, November 18; *The Times*, 1916, November 18). With the ban lifted, the Court of Session avoided ever having to determine the legality of the policy if properly introduced. Its last contribution concerned the financial liabilities in the case (Alison et al, 1917, 246).<sup>9</sup> However much it remained 'unfettered', events had certainly put the magistrates' discretion on ice and responsibility for managing drunkenness passed down to the now fully licensed publicans.

## 5. Conclusions

Scale is neither preliminary nor peripheral to the matter of law, but in its contested geographical claims is its very substance. Motherwell's magistrates conceived of their jurisdiction in an importantly localised and bounded territorial way. The horizontal disruption of that geography of authority, more so than the vertical defence of the magistrates' jurisdiction, allows us to glimpse the daily undoing of what David Delaney (2015, p. 97) has called law's 'self-authorizing claims of unity and coherence'. As Captain Kidd put it in the *Motherwell Times* (1916, November 25), the ban had been 'more and more

defeated as the tipplers got more and more accustomed to going further afield for their drink'. The trains and trams connecting Motherwell to Hamilton and Wishaw were the veins that kept things moving in the industrial heartland of the upper Clyde. The mobility of drinkers quickly strained the effectiveness of the magistrates' jurisdiction. The unanticipated *effects* of prohibition in a place of such porous and proximate jurisdictions here challenged the emplacement of licensing authority (Bennett, 2016, p. 182). In this expanding region of the Clyde, licensing had shown itself to be *too* local. To build on Bennett's analysis, law does not simply 'make place', which in this case would mean licensing shaping a culture of drinking local to Motherwell's jurisdiction. The particularities of place, rather, reshaped the geographies of licensing.

The growth of towns foreshadowed a need to redistribute powers to newly enfranchised voters and their elected representatives, to determine the appropriate scale for the administration of particular governmental tasks. Regan Koch (2015, p. 1233) rightly stresses that licenses are 'part of a largely unpublicized infrastructure that profoundly shapes how cities are organized'. Embedding such powers in their apparently proper, local, scale would enable Motherwell's authorities better to see 'like a city', to follow Mariana Valverde's (2011) localisation of James Scott's famous thesis. To return to Koch, it is not only the 'part' or role licensing played in organising urban life that stands out from this Motherwell case, but also its *partiality*. The admissibility and indeed incompleteness of local knowledge of and in licensing need emphasising.

This means looking beyond the individual licence, to a livelier social and material geography of the city, of people and of things that make actual legal landscapes. Amin and Thrift's (2016) *Seeing Like a City* envisions the 'throwntogetherness' of urban life in the broadest sense. The rescaling of policing and licensing powers identified in this paper represented an attempt to define and defend urban authority. This might seem to sit awkwardly with theories that claim that cities have 'no promise of territorial or systemic integrity' (Amin, 2002, p. 34, cited in Blomley 2013, p. 3; also see Prior and Hubbard, 2016, p. 14). The mobile subjects of social and municipal life, across jurisdictions, exposed the limits and limitations of the magistrates' spatial and scalar imagination of jurisdiction and reshaped the regulation of problem drinking. They show that spaces of administration such as the local municipality are always in formation, their coherence a performance of legal geography.

Recent changes to government offer an important parallel to the development of the 'local' examined here. The municipality, and the settlement of its relationship to central government, was at the heart of British liberal statecraft (Crewe, 2016, p. 6). Police burgh and town council government was a way of building civic localism and extending the local reach of the state. A new settlement is in the making, reshaping the political landscape and even civic identities of cities. City and regional devolution deals, for example, have created combined authorities with elected mayors in areas such as Greater Manchester, while a new localism agenda reaches across policy arenas from education to planning (Wills, 2016, pp. 34-35). Jane Wills (2016, p. 3) argues that such changes demand we rethink 'the fundamentals of our spatial imaginaries about political power and the role and place of

government'. That also means interrogating the changing role of place *in* government. The municipality – so threatened by austerity, according to Tom Crewe – represented such a distinctive geographical imagination of British statecraft. For Wills, responding to the challenge means building a new 'civic infrastructure' of neighbourhood scale forums and councils to ensure that localism does not simply serve groups who are already political active (Wills, 2016, p. 197). There an important challenge to map these ongoing revisions to the 'local' in local government, a re-placing as much as a re-scaling that will implicate geographies of governance in the development of new civic cartographies.

## **Notes**

1 This echoes theorisations of the state that challenge similarly vertical theorisations of power, exercised by an agency somehow detached from society (Mitchell 1991; Painter, 2006; MacLeavy and Harrison, 2010; Jeffrey, 2015), as well as questions of the ontological status of scale (Marston et al., 2005; Moore, 2008; Legg, 2009).

2 Greenhill's report is in documents collated in August 1940, suggesting civil servants and politicians were seeking lessons from the First World War.

3 Population growth was not always synonymous with localisation; infill could bring settlements together and lead to a merging of governance at that broader scale. In 1920 Motherwell merged with neighbouring Wishaw. Only in 1930 did the new combined burgh establish a force (of 70 officers) to work independently of the county (Lanarkshire Police Historical Society).

4 The Licensing (Scotland) Act of 1903 made provisions for local licensing courts for: royal or parliamentary burghs with populations of 4,000 and over; all burghs with

populations of 7,000 and over; and counties, or districts of counties, exclusive of these burghs. By the 1911 census there were 75 burghs entitled to have licensing courts and 74 county licensing districts (BPP, 1913 [Cd. 6896] LXXX.45, p. xxi).

5 Ingot output at the company's Dalzell plant rose from 318,000 tons in 1914 to a wartime peak of 516,482 in 1917 (Payne, 1979, p. 129). Expansion took its toll on the family: David Colville collapsed and died in October 1916, apparently under physical and mental strain; exhausted, Archibald died two months later (Payne, 1979, p. 131).

6 The columnist Captain Kidd reported that Provost Wilson had wanted a show of unanimity at the initial hearing (*Motherwell Times*, 1916, May 5). Greenhill recorded that Bailies Scott and Port had opposed Wilson.

7 As the Motherwell magistrates had already decided to appeal, the County feared that not participating might encourage the pursuers to start reclaiming expenses. This would not be reversed, even if they won the case (Glasgow City Archives (GCA), CO1/3/1/30, County Council of Lanark Minutes (Finance Committee), p. 333, 2 August 1916; *Lanarkshire*, 1916, August 5).

8 Following the judgment the Town Clerk of Motherwell had written to the County Clerk Sir Thomas Munro: £690 1s 1d had been spent fighting the Court of Session action and the Clerk now asked the County for payment. The County Finance Committee stalled, fearing a payment might be challenged by the County Auditor or an interested ratepayer (GCA, CO1/3/1/31, County Council of Lanark Minutes, p. 74, 7 February 1917, Finance Committee). In May 1917 Motherwell Town Council agreed to pay £222 8s 4d in judicial expenses to the licensees (NLCA, UJ/1/01/24, Town Council Minutes, p. 67, 1 May 1917).

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	Licenses per head of population
Burgh of Motherwell	1 to 814
Rutherglen	1 to 606
Wishaw	1 to 563
Hamilton	1 to 378
Lanark	1 to 215

**Table 1.** Licenses. (*Source: Motherwell Times 5th May 1916a*)

Figure 1

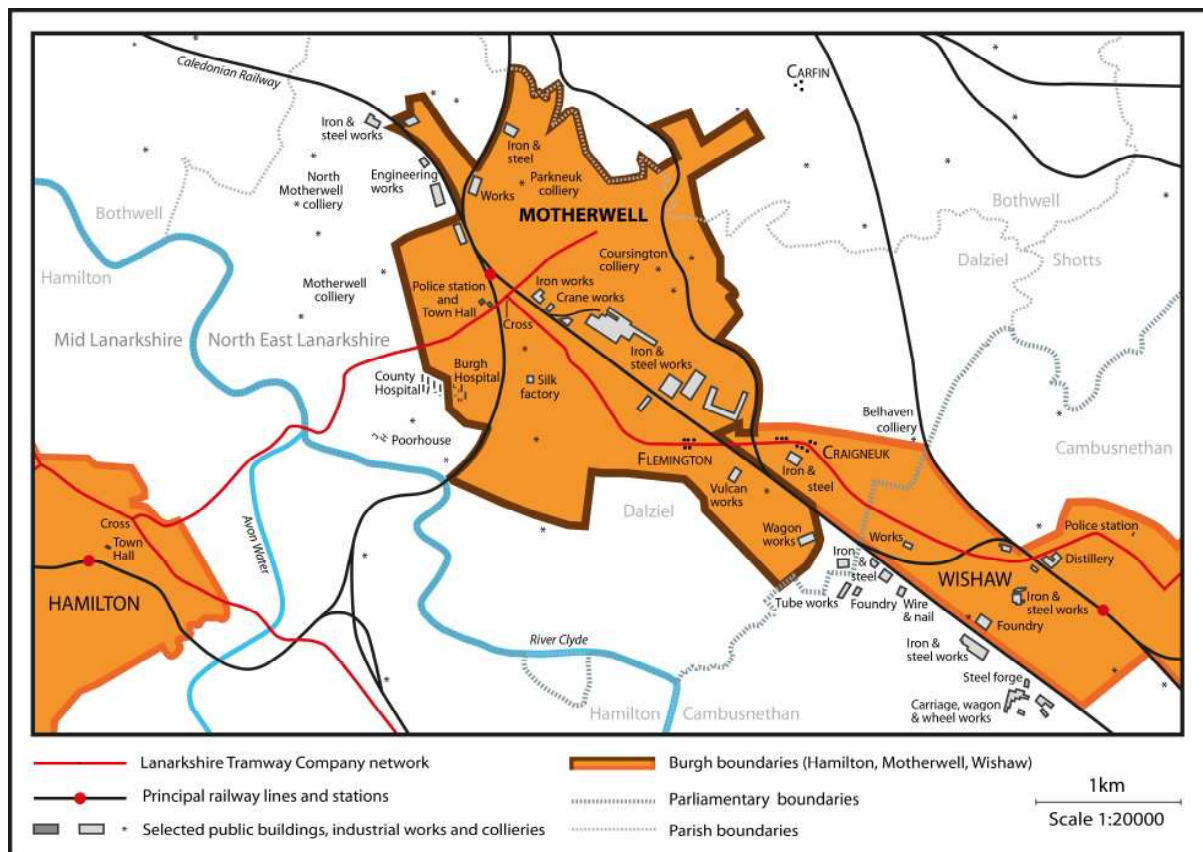


Figure 2

